

OFFICIAL TRANSCRIPT OF PROCEEDINGS BEFORE THE POSTAL REGULATORY COMMISSION

In the Matter of:

PUBLIC FORUM

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Docket No. ACR2009

VOLUME #1

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COMMISSION
OFFICE OF THE SECRETARY

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POSTAL REGULATORY COMMISSION

In the Matter of:)
) Docket No. ACR2009
PUBLIC FORUM)

Suite 200
Postal Regulatory Commission
901 New York Avenue, N.W.
Washington, D.C.

Volume 1
Wednesday, February 17, 2010

The above-entitled matter came on for public forum pursuant to notice, at 9:41 a.m.

BEFORE:

HON. RUTH Y. GOLDWAY, CHAIRMAN
HON. TONY HAMMOND, VICE-CHAIRMAN
HON. Nanci E. LANGLEY, COMMISSIONER
HON. DAN G. BLAIR, COMMISSIONER
HON. MARK ACTON, COMMISSIONER

PRESENTERS:

Alliance of Nonprofit Mailers:

DAVID LEVY
MATTHEW FIELD

APWU, AFL-CIO:

DARRYL J. ANDERSON

Bank of America:

MICHAEL SCANLON

Heritage Reporting Corporation
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PRESENTERS: (Cont'd.)

Direct Marketing Association:

JERRY CERASALE

Greeting Card Association:

DAVID STOVER
RAYMOND MORRISSEY
JAMES A. CLIFTON

Magazine Publishers of America:

DAVID LEVY
MATTHEW FIELD

National Postal Policy Council:

ARTHUR SACKLER
DAVID LEVY
MATTHEW FIELD

Parcel Shippers Association:

JAMES PIERCE MYERS

Pitney Bowes:

JAMES PIERCE MYERS
MICHAEL SCANLON

PostCom

IAN VOLNER
DAVID LEVY
MATTHEW FIELD

Transformation Strategy, Inc.:

ROBERT REISNER

Valpak Direct Marketing Systems:

WILLIAM OLSON
JOHN MILES
JEREMIAH MORGAN

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PRESENTERS: (Cont'd.)

Valpak Dealers' Association:

WILLIAM OLSON
JOHN MILES
JEREMIAH MORGAN

Valassis and Saturation Mailers Coalition:

THOMAS McLAUGHLIN

Public Representative:

KENNETH RICHARDSON

P R O C E E D I N G S

(9:41 a.m.)

CHAIRMAN GOLDWAY: The public forum to deal with Docket No. ACR2009 is formally called to order. I welcome all of you who are here today. I don't want to take up too much time because the topic that we are about to discuss is vast and has serious implications.

I'll simply say that in exercising our responsibilities to file an annual compliance determination with Congress I and my fellow Commissioners considered that the dire straights in which the Postal Service finds itself require that we consider the larger issues of the financial viability of the Postal Service in addition to some of the specific items within the law with regard to specific rates and costs, and we've asked the broader community to join in that deliberation with us and to give us their opinions and insights into what we hope will be an ongoing and sustained future for the Postal Service.

At the moment the Postal Service is presenting to us a plan for future stability that relies exclusively on action by Congress, which is something that is I think not likely to occur in any short order given the fact that it took 10 years for

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1 the PAEA to be enacted and Congress does not seem to
2 be moving forward with legislation on any front
3 quickly at this time.

4 So we have a serious matter in at least the
5 short term, even if we think Congress will act, and we
6 need to discuss that. I'm grateful for you all to be
7 here today and we'll move forward as efficiently as
8 possible. I'd like my other Commissioners to have an
9 opportunity to say something. Vice Chairman Hammond?

10 VICE CHAIRMAN HAMMOND: Thank you, Madam
11 Chairman, and thank you all for being here today at
12 our public forum on the annual compliance
13 determination.

14 You know, after the passage of the reform
15 legislation this Commission concentrated very hard on
16 developing a workable ACD process that would follow
17 the intent of the statute, and our ACDs to date I
18 believe have been successful and I look forward to
19 hearing your views today as we move forward with this
20 one, so thanks.

21 CHAIRMAN GOLDWAY: Commissioner Acton?

22 COMMISSIONER ACTON: I just want to thank
23 everyone for their time and their testimony and to
24 point out that the annual compliance determination is
25 this Agency's primary instrument for examining Postal

1 Service operations.

2 Your participation is of great assistance to
3 the Commission in our mission of improving
4 transparency and accountability for the United States
5 Postal Service. Thank you, Madam Chairman.

6 CHAIRMAN GOLDWAY: Commissioner Blair?

7 COMMISSIONER BLAIR: Thank you, Madam Chair.
8 I appreciate this opportunity today. You have a very
9 good turnout. I always appreciate this chance to hear
10 from the postal community on important issues of
11 common interest. I'm also interested in hearing today
12 from the Public Representative who, according to
13 statute, is charged with independently representing
14 the interests of the general public.

15 Today we're focused on the Commission's
16 annual compliance determination for the Postal
17 Service's operations in 2009. During my two years as
18 Chairman of the Commission, I oversaw this ACD process
19 as we established both the format and procedures in
20 compliance with the statutory requirement that the
21 Commission review the previous year's operations and
22 performance.

23 I understand the processes evolve over time,
24 yet I'm aware that some have expressed reservations
25 and concern that the Commission not convert the

1 compliant determination process into an old style, pre
2 PAEA rate case. I share that concern.

3 I believe that examining plans for the
4 future can inform our review of past performance.
5 However, I strongly believe that our statutory role
6 requires that we have a defined scope for the
7 examination of the Service's future plans.

8 I'm committed to working with my colleagues
9 to ensure that this process remains true to the
10 statutory intent of the PAEA and we continue to resist
11 the temptation to lay our past practices on the new
12 regulatory environment the Commission worked so hard
13 to establish. I look forward to hearing from many of
14 you today. Thank you.

15 CHAIRMAN GOLDWAY: And Commissioner Langley?

16 COMMISSIONER LANGLEY: Thank you, Madam
17 Chairman. I really am encouraged by the number of
18 people who are in the audience today, and I do want to
19 mention that it's my belief that as regulators we have
20 the responsibility to ask tough questions because in
21 the end we are the ones who are accountable to the
22 public, the government and to the entities which we
23 regulate.

24 The PAEA entrusts the Commission with the
25 responsibility of providing a window into past years'

1 postal finances and operations through the annual
2 compliance determination process, and all of you who
3 are participating today are furthering that mission,
4 as my colleagues have mentioned, so I'd like to thank
5 those who are participating today, as well as those
6 who have filed formal comments in response to our
7 solicitation. Thank you.

8 CHAIRMAN GOLDWAY: Okay. I'd like just a
9 little bit of housekeeping, if I could. We have a
10 list here of organizations who have indicated they
11 wanted to be presenters, but this may not be a
12 complete list and there may be people on this list who
13 have chosen instead simply to be participants and to
14 ask questions later, so I'd like to go through the
15 list I have.

16 Alliance of Nonprofit Mailers, David Levy?
17 David? You're set to make a presentation? Yes?

18 MR. LEVY: (Not mic'd.)

19 CHAIRMAN GOLDWAY: You don't have an opening
20 statement? Okay.

21 MR. LEVY: (Not mic'd.)

22 CHAIRMAN GOLDWAY: Wait. I didn't hear
23 that. Bank of America?

24 MR. LEVY: (Not mic'd.)

25 CHAIRMAN GOLDWAY: Yes.

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1 MR. LEVY: (Not mic'd.)

2 CHAIRMAN GOLDWAY: Okay. But you will not
3 be making an initial presentation for any of those
4 clients?

5 MR. LEVY: (Not mic'd.)

6 CHAIRMAN GOLDWAY: Okay. APWU, AFL-CIO?

7 MR. ANDERSON: Darryl Anderson. I will (Not
8 mic'd.)

9 CHAIRMAN GOLDWAY: Okay. Bank of America,
10 Michael Scanlon?

11 MR. SCANLON: No presentation (Not mic'd.)

12 CHAIRMAN GOLDWAY: Okay. Direct Marketing
13 Association?

14 MR. CERASALE: (Not mic'd.)

15 CHAIRMAN GOLDWAY: Greeting Card
16 Association?

17 MR. STOVER: David Stover for Greeting Card
18 Association. We will (Not mic'd.)

19 CHAIRMAN GOLDWAY: Okay. Parcel Shippers
20 Association?

21 MR. MYERS: Good morning. (Not mic'd.)

22 CHAIRMAN GOLDWAY: Okay. Pitney Bowes?

23 MR. SCANLON: No presentation (Not mic'd.)

24 CHAIRMAN GOLDWAY: Oh, you will? Okay.
25 Transformation Strategy?

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1 MR. REISNER: (Not mic'd.)

2 CHAIRMAN GOLDWAY: Valpak?

3 MR. OLSON: (Not mic'd.)

4 CHAIRMAN GOLDWAY: Good. Okay. And you're
5 representing both Valpak Direct Marketing and Valpak
6 Dealers?

7 MR. OLSON: Yes.

8 CHAIRMAN GOLDWAY: Is there anyone else in
9 the audience who would like to make an initial
10 presentation? Yes?

11 MR. McLAUGHLIN: (Not mic'd.)

12 CHAIRMAN GOLDWAY: Okay. We want to make
13 sure everybody here gets a chance to have that initial
14 two minutes that we talked about. If there's anyone
15 who needs a PowerPoint presentation, we've set that
16 up. You can work with Mr. Rabnitsky or Secretary
17 Grove, who is here, if you need that.

18 All right then. I think we'll begin with
19 brief comments from those who want to initiate the
20 discussion and then we'll take questions from the
21 bench and questions from the audience and see how the
22 conversation proceeds from there.

23 So, Mr. Anderson, do you want to begin?
24 Come forward to the table where there are microphones
25 so that the webcast audience and the court reporter

1 can hear you. Thank you.

2 MR. ANDERSON: Good morning. Thank you for
3 providing this opportunity. On behalf of the American
4 Postal Workers Union, I want to highlight just four
5 issues that I know are of interest to everyone in this
6 room and that I suggest be the topic of conversation
7 or discussion here today. I'll mention each of them
8 and then come back and elaborate just briefly.

9 One is the status of retirement funding by
10 the Postal Service. Second, I'd like to make the
11 point that it's not possible for the Postal Service to
12 restore its financial health by cutting service. I
13 think the subject of capital funding for the Postal
14 Service and capital expenditures by the Postal Service
15 is something that the Commission and the Postal
16 Service and the postal community need to attend to.

17 And, fourth, I will touch briefly, and I
18 know everyone would be surprised if I didn't, on the
19 subject of workshare discounts. I think particularly
20 in the ACR context that issue is a legal issue and is
21 one that does require the Commission's attention.

22 On the issue of retirement funding, I
23 suspect that there's broad consensus in this room that
24 the overfunding -- that the Postal Service has
25 overfunded its retirement obligations and that that

1 overfunding should be attended to and should be used
2 for the benefit of the Postal Service.

3 I won't in this forum or in these brief
4 remarks elaborate on this. I think probably everyone
5 in the room is aware of that situation. What I do
6 want to urge, though, is that the Commission should
7 regard that as a topic that's within its scope, within
8 the purview of its responsibilities to observe and
9 comment on.

10 As the body with deep responsibilities and
11 important and broad responsibilities for the welfare
12 of this institution, I think the Commission has an
13 obligation to address that issue and should urge that
14 it be redressed to the benefit of the Postal Service,
15 so I hope the Commission will do that. We will in our
16 written remarks be more specific with regard to
17 sources of authority and the obligation of the
18 Commission on that score.

19 On the issue of financial health and whether
20 it can be restored by cutting, I think the issue of
21 six day delivery versus five day delivery is one that
22 is really important and a good example. In our view,
23 the competitive advantage that the Postal Service
24 enjoys by having six day delivery is something that
25 they should treasure and protect, and the Commission I

1 would hope would respect that as well.

2 The Postal Service I think will be
3 shortsighted and will be solving a short-term problem
4 with long-term consequences that could be adverse to
5 the Postal Service's competitive position if it were
6 to abandon six day delivery.

7 Stations and branches is another example.
8 There certainly the Postal Service can point to
9 financial advantage from closing particular stations
10 and branches, but we submit that the issue of public
11 services is critical here, and if the Postal Service
12 retrenches in ways that abandon its service to the
13 public and to every community, particularly the poorer
14 communities who so much rely on the locations of
15 stations and branches in their neighborhoods, it will
16 lose the important public support that it enjoys today
17 as one of the most respected institutions in our
18 society, whether public or private, so we urge that
19 that be borne in mind.

20 Again, this is in the context of and I know
21 that's the subject of another proceeding before the
22 Commission, not the ACR proceeding, but this is in the
23 context of the financial viability of the Postal
24 Service.

25 Network consolidation is another area where

1 the Postal Service has engaged in important work to
2 become more efficient in service resources and that's
3 an area where I think I can segue into the third topic
4 I wanted to raise, which is capital expenditures.

5 It's an area where the Postal Service, by
6 virtue of being required to overfund and excessively
7 fund retiree benefits, including retiree health
8 benefits, has been shortchanged in capital
9 expenditures, and if the network consolidation program
10 that everyone in this room supports and thinks must be
11 done in an efficient way and an appropriate way has
12 been compromised, very unfortunately compromised by
13 virtue of the unfair and excessive funding
14 requirements on retiree health benefits, among other
15 reasons.

16 And finally on the issue of excessive
17 workshare discounts, recognizing Commissioner Blair's
18 observations about the nature of an ACR proceeding and
19 how this is not to be converted into a regular rate
20 case, this is one in which the Postal Service has
21 acknowledged and it's clear on the record that
22 workshare discounts exceed costs avoided in
23 contravention of the statute, 3622(e).

24 They have only waived a perfunctory oral or
25 perfunctory verbal excuse for this violation, and in

1 fact what they're seeking is not to justify it under
2 3622(e), but to rewrite the statute and create a whole
3 different way of calculating costs avoided in order to
4 seek to justify excessive discounts.

5 This is an issue which is pertinent to their
6 financial viability, which is the topic of today's
7 discussion. It's also at the core of what the
8 Commission's obligations are in ACR2009. The
9 Commission is obligated to find that there is a
10 violation of law and to recommend a remedy for that
11 violation.

12 Finally just to recap, I'd like to say that
13 the Postal Service is an institution that's shown
14 incredible financial resiliency in the face of
15 electronic diversion, and in the face of this
16 insuperable or virtually insuperably obligation to
17 overfund at an accelerated pace retiree health
18 benefits as an institution even in the face of a very
19 deep recession has incredibly shown that's it very
20 viable and remarkably healthy but for these other
21 problems that are imposed externally and artificially.

22 In Washington, D.C. perhaps artificial isn't
23 a fair or appropriate way to talk about Congress, but
24 in fact we're getting constraints from Congress that
25 really are hamstringing the very organization which

1 postal reform legislation was intended to preserve.
2 With that, thank you very much again and I will defer
3 to others.

4 CHAIRMAN GOLDWAY: We're going to hold
5 questions until everyone has made their initial
6 remarks, so the next one would be Jerry Cerasale,
7 Direct Marketing Association.

8 MR. CERASALE: Madam Chair, Commissioners,
9 thank you very much for this opportunity for DMA to
10 speak. We think it's a very important subject and
11 it's a very important job that you have.

12 I think the first thing that DMA would like
13 to raise the point to you is that the financial
14 stability of the Postal Service is very, very
15 important to the nation, to our members particularly,
16 and that is important in 2010, it's important in 2011,
17 but it's very, very important in the long term.

18 As you look in this proceeding as to where
19 the Postal Service is in its financial viability you
20 have to look in the long term here. We need the
21 Postal Service and we need a postal service, a hard
22 copy delivery for the nation. Looking shortsighted at
23 2010 and 2011 only can give you decent results for
24 that short term, but a horrible result in the long
25 term.

1 You've seen volume drop. It is a time now
2 to try and have the Postal Service try and grow some
3 volume, to try and get back some financial stability
4 that way and not just looking at cuts, cuts in
5 services and so forth, which are also important. To
6 get on some points that you, Chairman, particularly
7 asked in your letter, your invitation, taking a look
8 at closing of stations and branches, the Postal
9 Service must look at this.

10 Currently the Postal Service is an operation
11 that we think can deliver 300 billion pieces of mail a
12 year, and the mailers are paying for that. It's
13 likely that the Postal Service in the future has to
14 deliver 150 billion pieces of mail a year, and with
15 that reality mailers cannot afford to support a 300
16 billion piece per year delivery system and so the
17 Postal Service has to go through the painful process
18 of downsizing. Rightsizing is what we use, but that's
19 what it is, and we have to go through it and it's very
20 painful for all of us.

21 Looking at stations and branches, you have
22 historically talked about appeal procedures for
23 stations and branches as to the only one in the
24 community and so forth, and I think that remains under
25 this Act where the Postal Service has to take these

1 looks and not have duplicative offerings in stations
2 and branches. They need to do that. They need to be
3 encouraged to do that, and there is still a procedure
4 that you have for affected customers to raise issues
5 with you and that would continue.

6 Taking a look at reducing the number of
7 delivery days, there is a competitive advantage for
8 the Postal Service to deliver six days a week. There
9 is a cost to deliver six days a week, and it's
10 something that we have to look at. We do know that
11 Congress at this point every year since '83 has
12 required six day a week delivery, and that remains in
13 the President's budget presentation that he just sent
14 to Congress.

15 But the Postal Service will be filing
16 something with you, and I think it's time we need to
17 look at it. As a mailer organization, we need to know
18 what is the plan. It's not just cut a day of
19 delivery. That will affect us. That will affect my
20 members and hurt some of them. Some it will not
21 affect at all, but some it will hurt.

22 We need to see what is the countervailing
23 tradeoff? What are we getting for that if you do
24 allow that reduction in delivery days? And that is
25 something that we hope that the proceeding, when the

1 Postal Service finally files its plan with you, we
2 will be able to fully discuss, but it's something that
3 should in fact be on the table there.

4 I think that that is really where DMA wants
5 to look and focus, to urge you to take a look at the
6 long term for the Postal Service. We need the Postal
7 Service in the long term. It must be a smaller Postal
8 Service than it is today, a smaller Postal Service
9 than it was yesterday, but we need to go about this in
10 an orderly manner.

11 We've seen many private sector companies
12 have to go through this, and the hope is is that we
13 can do this the correct way and on an even playing
14 field going down without dramatic disruption that
15 we've seen in other industries. Thank you for this
16 opportunity.

17 CHAIRMAN GOLDWAY: Thank you. Parcel
18 Shippers? Mr. Myers?

19 MR. MYERS: Good morning, Madam Chairman and
20 members of the Commission. I'm Pierce Myers on behalf
21 of the Parcel Shippers, and Tim May sends his best.

22 CHAIRMAN GOLDWAY: Partying too long last
23 night?

24 MR. MYERS: It meant a lot to him last
25 night. It was very nice of you folks to help us

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1 celebrate his 40 years of service to this association.

2 As you know, we represent largely business
3 to consumer shippers and as such our members largely
4 use competitive products. In that respect, this year
5 they've already given at the office. They had a rate
6 increase in January for Parcel Select, Priority and
7 Express.

8 However, they are heavy users of certain
9 market dominant products which were subject to the
10 rate freeze and which are largely under consideration
11 in this ACD -- Standard Parcels, First Class Parcels,
12 Bound Printed Matter Media, that sort of thing.

13 I do think that using this annual compliance
14 review process to do sort of a deeper dive into the
15 overall financial viability is the word that the
16 Chairman used of the Postal Service is a good idea.
17 Certainly it is within the Commission's overall
18 authority.

19 You folks have 14 factors and nine
20 objectives, some number of requirements -- I'm not
21 quite sure how many actual requirements there are in
22 the PAEA. It depends on how you read it. Those
23 commands are at the same time complementary,
24 inconsistent, conflicting. They instruct and
25 authorize and in some cases require you to do certain

1 things, so I think this is a wise proceeding on your
2 part.

3 However, I was somewhat struck by the notice
4 of this proceeding. It announced that you were going
5 to be looking at the financial stability of the Postal
6 Service. I think that term was used four or five
7 times in the notice.

8 In the chatter around the community we're
9 constantly talking about the financial stability of
10 the Postal Service, and I think you probably
11 understand there's concerns out there that the
12 Commission could find in this process that that
13 stability may require a rate increase for market
14 dominant products, which the Postmaster General has
15 previously announced he does not intend to increase
16 rates for over the course of calendar year 2010.

17 I do want to point out to all that the term
18 stability is used twice in the objectives of the Act.
19 In (b)(5) it talks about one objective being the
20 financial stability of the Postal Service. In (b)(2)
21 it talks about rate predictability and stability being
22 an important objective of the Postal Service.

23 The usual market dominant products have
24 gotten used to annual adjustments, which is another
25 thing that appears to be contemplated by the PAEA.

1 It's not required, but I think the regular periodic
2 adjustment mechanism is something that the PAEA
3 clearly envisions.

4 The users of market dominant products, as
5 I've said, are on notice and have a reasonable right
6 to expect that there will be no rate increases in
7 2010, and I would hope that we would not disrupt the
8 rate cycle this year, given everything that is going
9 on despite legitimate concerns out there that
10 something needs to be done in the future, and I think
11 the Postal Service should look forward to and welcome
12 your guidance with respect to how they should proceed
13 on the rate situation in the future.

14 Finally, I want to just take a minute to
15 comment on Mr. Anderson's comments about the Postal
16 Service trying to rewrite the rules of statute on
17 worksharing. Admittedly, the rules for how you
18 measure cost avoidance, particularly in first class
19 mail, and we do use first class parcels, are under
20 review by the Commission and have been the focus of
21 APWU's comments and others in this proceeding.

22 But we have a rulemaking going on that I'm
23 linking and delinking and all of that, a very
24 complicated rulemaking, and I think the Commission
25 should proceed in that venue to address the issue that

1 Mr. Anderson raised in that regard. Thank you very
2 much.

3 CHAIRMAN GOLDWAY: Sorry. I'm writing
4 notes. Mr. Reisner from Transformation Strategy?

5 MR. REISNER: Good morning, Madam Chairman
6 and members of the Commission. I'm struck as I sit
7 here and listen to my friends, Jerry Cerasale and
8 Pierce Myers, comment how similar the comments that I
9 have for you are.

10 I appreciate very much your invitation to
11 come and comment, and I believe as well that the
12 Commission's proceeding here is wise; that as you take
13 a look at this particular year it's important also to
14 have a balanced view and to look more broadly at
15 financial viability of the Postal Service, and I
16 believe that a balanced view inevitably leads you to
17 look at the revenue side of the Postal Service, as
18 well as its success in meeting its performance
19 standards and in cutting costs.

20 With respect to the revenue side, I have
21 three comments very briefly. First, the Commission
22 has been very clear, particularly in your proceeding
23 of January 14 on nonpostal services and in other
24 matters, that you wish to be very judicious in calling
25 balls and strikes according to PAEA and performing

1 that role.

2 But it's important to remember also that the
3 Commission has a broader responsibility that you're
4 often asked to exercise as Members of Congress and
5 oversight committees ask you to comment, as the
6 Administration asks you to comment and to look more
7 broadly at the Postal Service as a whole, and I would
8 urge you as you do so to think strongly about how you
9 might broaden the strike zone and make it possible for
10 the Postal Service to become the kind of flexible,
11 agile institution that we all hope that it can be and
12 that it can be on behalf of its customers.

13 My second comment relates to this and comes,
14 Madam Chairman, from comments, for example, that you
15 made on November 5 in testimony before the Oversight
16 Committee. In that testimony you commented that there
17 are parts of PAEA that have been exercised
18 aggressively to introduce new innovation and new
19 products. The NSA provision particularly has
20 increased. And you also point to the fact that there
21 are other aspects of the law that haven't been used as
22 much; for example, experimental products.

23 The comment that I'd make is it's not
24 necessarily clear that because experimental product
25 filings haven't taken place that there's no

1 experimentation taking place, and I would encourage
2 the Commission to collaborate with the Postal Service
3 and to think as broadly as possible about what the
4 overall effect is. Is there experimentation taking
5 place?

6 In that oversight hearing Mr. Bernstock from
7 the Postal Service made several comments and offered
8 several suggestions about regulatory innovation.
9 Commissioner Blair and I were involved in a forum that
10 was sponsored by Pitney Bowes several years ago, and
11 we had an opportunity to talk with European regulators
12 about innovation, and I was struck by how many ideas
13 there are in the world about ways in which the
14 regulatory process can become more efficient, more
15 innovative and can introduce new products and services
16 that can serve customers and can help the community at
17 large.

18 With respect to that, Mr. Bernstock talked
19 about preapproval of products or categories of
20 products, creating categories of NSAs. He talked
21 about preapproval within bands to protect against
22 things and having the Commission perhaps play a role
23 after the fact in a more lighthanded regulatory
24 process.

25 The purpose of talking about this is very

1 straightforward. We talk all the time about Lean Six
2 Sigma postal processes and how to make the Postal
3 Service more efficient. My encouragement is that you
4 think about that on the revenue side, as well on the
5 cost side.

6 And just so that I'm not sitting here
7 talking about what other people have had
8 responsibility for, my third comment quickly is with
9 respect to public/private partnerships, which I talked
10 about in that oversight hearing as well. The law
11 under § 1004 talks about -- encourages -- public/
12 private partnerships.

13 This is a topic that I'm personally familiar
14 with because some time ago, more than a decade ago
15 when I had some responsibility at the Postal Service
16 for creating new services, there was a thought then
17 that the Postal Service should be the provider of
18 internet services. I think the market has evolved.

19 My comment would be that was then; this is
20 now. That sort of thing is probably not likely or
21 desirable, but if the private sector were to join with
22 the Postal Service in creating innovation, and most
23 customers are already using the internet in ways that
24 enhance mail services, but if the Postal Service were
25 to provide that kind of a platform through public/

1 private partnership my comment would be it's vague as
2 to what the effect of that might be, and that's
3 something that might be anticipated.

4 For example, how might the Commission rule
5 on public/private partnerships? What would be
6 appropriate? Are the standards that are applied to
7 nonpostal services the same ones that might be applied
8 in such a circumstance? Is the standard service of
9 public need and is that related to the universal
10 service obligation? Is another one of the service
11 standards that the private sector couldn't provide
12 that service? That in particular I think is a vague
13 and difficult standard to use.

14 Maybe the most interesting one of all is
15 what revenue could come for the Postal Service, for
16 the public side, from such a public/private
17 partnership. I think it's a big topic for another
18 time, but it's a good example of the way in which the
19 Commission and the Postal Service might collaborate to
20 establish some in advance standards about how such
21 things might be considered.

22 Should the public side -- should the
23 taxpayer -- receive some gain from the opportunity to
24 participate in that sort of thing? Should there be a
25 vehicle such as employee share ownership or any number

1 of other possibilities.

2 So finally just in conclusion, I think it's
3 important as we talk about this broader context to
4 talk about what our goal is: A flexible, innovative,
5 agile and fair postal system where in my experience
6 many of the best ideas came from employees who had the
7 idea, who were working with products and services, or
8 from entrepreneurs who had a great idea and wanted to
9 bring it to the Postal Service and in effect say I
10 have a knack for that.

11 If we can create that kind of system then
12 perhaps the long-term viability would be less of a
13 concern than it is here in this proceeding. Thank you
14 very much. I'll be glad to answer questions.

15 CHAIRMAN GOLDWAY: Great. Now Valpak, Bill
16 Olson?

17 MR. OLSON: Madam Chairman, William Olson
18 representing Valpak. First, after providing a 75 page
19 initial set of comments I'm appreciative of being able
20 to speak at all, but I'll try to cover some of the
21 matters we discussed there.

22 As a matter of fact, the first 40 pages of
23 our initial comments were on the subject of the Postal
24 Service's financial situation and how to deal with it,
25 and I want to key off what you said at the beginning

1 of your statement about assuming current law
2 basically, which is what agencies are taught to do;
3 that you assume that Congress is not going to come in
4 and change anything and you want to take a look and
5 see what it would be like under that scenario.

6 I'm going to suggest that this might be the
7 year where that is not the right assumption to make.
8 It's contrary to a lot of administrative law, but I
9 think that's where we are where Congress through PAEA
10 has put the Postal Service in a position -- maybe it
11 didn't look like it back then, but it's turned out to
12 be an impossible position of generating net income of
13 \$58 or so billion over 10 years to fund just one type
14 of its health benefit cost and also live under a whole
15 series of other constraints.

16 The Congress realized that problem in
17 September of last year, and I think there's every
18 reason to believe it's going to realize it in
19 September of this year, hopefully earlier than it did
20 last year. And I think part of what the
21 responsibility of the mailers in this room and mailing
22 associations and in fact the Commission is to get the
23 word back to the Hill that this is a burden that
24 cannot be sustained, particularly at a time where
25 we're suffering an economic depression that is as bad

1 as anything has been since the Great Depression.

2 So what we're urging is that there be some
3 deference to the Postal Service; that there be some
4 consideration for their managerial flexibility to cut
5 costs and to be able to deal in a way that a business
6 would, the way that Congress talked about when they
7 passed PAEA; that they would have the flexibility to
8 cut the perhaps \$3.5 billion of costs out of the
9 system with flexibility to either eliminate five day
10 delivery or wherever it seemed like it was appropriate
11 based on volume and other factors.

12 The Postal Service would have the managerial
13 flexibility to work with station and branches and
14 network consolidation. It would take a very close
15 look at this issue of money losing products because
16 we're now up to \$1.751 I think it is billion of losses
17 in fiscal '09 from 11 different products that had an
18 average cost coverage I think it is of about 80.5
19 percent.

20 I don't think PRA or PAEA envisioned that we
21 would have money losing products that weren't
22 contributing anything to institutional cost, and we do
23 think that this is a matter that has to be resolved
24 the next time rates are increased and the Commission
25 has some responsibility to push the ball along on that

1 one.

2 But we also look at things like the IG
3 report here on CSRS and the overpayment. I mean, if
4 that's true then all the problems go away basically.
5 We're dealing with the Postal Service retirement
6 health benefit fund being perhaps excessive. We're
7 dealing with the fact, and we put in a proposal
8 actually in our testimony that the amount could be
9 reduced to about \$1.2 billion per year plus about \$1.2
10 billion of interest earned on the account. Well,
11 that's contributing \$2.5 billion per year to fund
12 these expenses, which it should not be any higher than
13 that.

14 The point is that these areas of Postal
15 Service flexibility, managerial flexibility that deal
16 with this kind of a situation, we think mailers ought
17 to be behind this. We're today hand delivering about
18 150 letters up to the Hill urging this from Valpak.
19 We know many other associations are doing similar
20 things and working very hard on it.

21 We would urge the Commission to do its job.
22 We think that it's built into the system that when you
23 see something that's a problem that you help intercede
24 and run some interference for the Postal Service on
25 the Hill to explain the types of cost cutting that

1 they should have the power to make.

2 If mailers do their job and the Commission
3 does its job and the Postal Service exercises its
4 managerial discretion, we actually think we could be
5 in for a period of price stability optimally, and in
6 the long run that would be what perhaps we need. So
7 thank you very much.

8 CHAIRMAN GOLDWAY: Thank you. And Valassis,
9 Tom McLaughlin?

10 MR. McLAUGHLIN: Thank you, Madam Chairman.
11 Tom McLaughlin for Valassis and also the Saturation
12 Mailers Coalition. As I indicated earlier, the
13 comments I have concern a set of comments filed on
14 February 5 by the National Postal Mail Handlers Union,
15 and of the initial comments in my opinion these are
16 the most important comments that were filed. They
17 deal exclusively with the federal payment obligations
18 that the Postal Service must pay to the retiree health
19 fund in the federal Treasury.

20 Coming after Bill Olson, I find myself in
21 the unusual position of agreeing with him in almost
22 everything he said. The fact is is that there is a
23 huge overfunding going on not only of the retiree
24 health calculations, but going back to the pension
25 fund. Chairman Blair, in a former life you may recall

1 that OPM and OMB and the rest of the Administration
2 had to deal with these issues.

3 The crux of the problem on the pension side,
4 which the OIG report shows a \$75 billion overpayment,
5 goes back to a 1974 law enacted shortly after postal
6 reorganization which basically as interpreted by the
7 Administration since then has greatly skewed the
8 Postal Service's payments for employees of the former
9 Post Office Department.

10 As the OIG report -- an excellent report, by
11 the way; very well documented -- shows that has
12 resulted in a \$75 billion overfunding of the pension
13 fund, and if that were applied to the retiree health
14 fund that would fully fund the retiree health fund.

15 We'll address in reply comments in more
16 detail the problems with the way those payments are
17 calculated and why it is so unfair. Back then the
18 Postal Service was viewed as a cash cow. There it is
19 sitting out there generating a lot of cash and it can
20 help to support the federal budget. That's what that
21 '74 law did.

22 For the first 30 years, the Postal Service
23 enjoyed robust demand for its products. It enjoyed
24 almost ever increasing volumes -- a few dips here or
25 there, but a very expansive universe over which to

1 shelter its financial position and really hide these
2 underlying problems.

3 Those days are long behind us, and we may
4 never return to that kind of robust demand in growth
5 and volume. We hope there will be a turnaround
6 someday, but it's not going back to where it was
7 before. The cow is dry, and the Postal Service can no
8 longer afford the burden it's living under.

9 You can fiddle with rates. You can fiddle
10 with service. Those will provide perhaps short-term
11 relief, but they are not going to provide the kind of
12 long-term relief, especially not when you're facing a
13 down demand market. Absent relief from these
14 obligations, it is a sinking ship and all we're doing
15 is just shuffling the shares.

16 I know the next question is well, isn't that
17 Congress' problem? Of course Congress is the one that
18 has to do the solution to that and, Madam Chairman, we
19 all know that legislation is always an uncertain
20 proposition. The fact is if you don't ask, if you
21 don't press forward, you won't ever get it.

22 In terms of the Commission's responsibility,
23 I agree wholeheartedly with Mr. Olson's comments. The
24 Commission does have a shared responsibility with the
25 Postal Service in seeing the financial stability of

1 the Postal Service long term. That's a very important
2 responsibility. I know that you folks share that very
3 much.

4 Part of that is informing Congress of the
5 status of the postal ship -- where it's headed, what
6 the options are and what the consequences are of
7 inaction on things like this. It is very important
8 for you to lay out to Congress what the choices are
9 and the consequences, and we will be addressing these
10 more in the reply comments, but it is an area that
11 must be done and I believe it is the highest priority
12 for the postal community. Thank you.

13 CHAIRMAN GOLDWAY: Thank you. So we don't
14 have anyone else who -- did I miss you? I'm sorry.
15 Pitney Bowes. No. Who am I missing? Introduce
16 yourself.

17 MR. SCANLON: Michael Scanlon on behalf of
18 Pitney Bowes. Madam Chairman, as you know, Pitney
19 Bowes has filed formal comments in this proceeding.
20 We will be filing reply comments also, but did want to
21 make some brief opening remarks.

22 First, I would thank the Commission. We
23 appreciate the Commission's leadership on this
24 important issue. The financial stability of the
25 Postal Service is important not only for the Postal

1 Service, but also critically important for all those
2 who use the mail for their commercial communication
3 needs.

4 Pitney Bowes believes that while uncertain,
5 legislative relief is an essential component to the
6 long-term financial health of the Postal Service, and
7 we agree with the other opening comments that the
8 Commission has a role to play there in helping to see
9 that happen.

10 In the context of the ACR proceeding itself,
11 Pitney Bowes believes that a measured response is
12 appropriate and necessary. The Commission must take
13 great care to reconcile the apparent need for
14 immediate action with the longer term needs of the
15 Postal Service and the rate stability of the mailing
16 community.

17 An off-cycle rate adjustment would be
18 disruptive and, notwithstanding recent improvements in
19 the economy, now is not the time for an unbudgeted or
20 unanticipated rate increase from any mailers. The
21 Postal Service should, however, be encouraged to
22 exercise its authority and the pricing flexibility it
23 does have under the new law to try to incentivize and
24 grow volumes where it can, particularly with respect
25 to its more profitable mail products.

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1 Lastly, in response to the earlier comments
2 regarding the costing methodology for workshare, we
3 echo the comments of the Parcel Shippers Association.
4 That is the subject of a separate proceeding that was
5 instituted by the Commission, RM2009-3, for the
6 express purpose of providing the Commission the time
7 outside the tight timelines of an ACD to really review
8 that issue, and in the context of the current ACR the
9 Postal Service appropriately filed both a delinked and
10 linked cost model for the Commission's review. Thank
11 you.

12 CHAIRMAN GOLDWAY: Thank you. I know that
13 the Public Representative, Tim Richardson, is here,
14 but you had indicated that you didn't want to make any
15 initial responses. That's why I didn't call on you.
16 Have you changed your mind?

17 MR. RICHARDSON: Well, I hadn't really
18 changed my mind. I was relying on my lengthy comments
19 that were filed on February 2. I'd be happy to make
20 any comments or answer any questions.

21 CHAIRMAN GOLDWAY: Well, I think we're all
22 familiar with your testimony. I'll ask the
23 Commissioners if they have questions of those people
24 who presented comments initially. I'll begin on the
25 other side this time, so with Commissioner Langley.

1 Do you have some questions you'd like to ask?

2 COMMISSIONER LANGLEY: Really not a
3 question. I appreciated everybody's comments. They
4 were very thoughtful.

5 It was suggested I guess by Mr. Olson that
6 the Commission could run interference up on the Hill,
7 and I'm assuming you're talking about our expert
8 advice to the Hill like we were asked to comment on
9 the retiree health fund and we developed our report
10 which showed that the Postal Service could save money
11 by having a different payment schedule.

12 But there was also mention from others as
13 well, managerial flexibility to the Postal Service,
14 and so one of the areas that I think might be of
15 interest to me is hearing a little bit more of where
16 you in the audience think that we should exercise more
17 management flexibility.

18 CHAIRMAN GOLDWAY: Okay. So I think what
19 we'll do --

20 COMMISSIONER LANGLEY: And I'm not sure how
21 you want to handle that.

22 CHAIRMAN GOLDWAY: We'll let everyone ask
23 their questions, and then if we have a couple more of
24 those general issues then we'll hit every one of those
25 with the people who want to comment on them, okay?

1 COMMISSIONER LANGLEY: That would be great.

2 Thank you.

3 CHAIRMAN GOLDWAY: So, Commissioner Blair?

4 COMMISSIONER BLAIR: If you could just
5 explain that one more time? General questions will be
6 reserved for the end and specific questions now?

7 CHAIRMAN GOLDWAY: Well, yes. A general
8 question that Nanci addressed to the audience about
9 give us more information about what you mean about
10 management's flexibility, more specifics, is something
11 that I will hold and then open up to the whole
12 audience, but if you have specific questions of any
13 one of the participants I think now is the time to ask
14 those.

15 COMMISSIONER BLAIR: Okay. Thank you, Madam
16 Chair. I appreciate that. I have a couple of
17 specific questions.

18 First for Mr. Anderson. You had discussed
19 the workshare discounts, and I was just wondering if
20 you could give us a primer on what the law actually
21 says because as I remember the law is very specific in
22 this area about costs, but it also provides some key
23 exceptions and I wanted to hear what your views were
24 on how those exceptions worked within the general rule
25 of workshare discounts.

1 MR. ANDERSON: Well, the exceptions. I
2 think the key point for this ACR2009 is that the
3 exceptions have to be first of all invoked about the
4 Postal Service if it seeks to justify a workshare
5 discount that exceeds costs avoided, and in this
6 instance the Postal Service has really not invoked any
7 of those exceptions other than the last exception.

8 It has made reference to the last exception,
9 which is that to redress or if it were required to
10 eliminate the excessive discounts that it would impede
11 the operations of the Postal Service, but there's
12 absolutely nothing in the record factually to support
13 that and there's really no reasoned argument in the
14 Postal Service's presentation to support that.

15 So I would submit to the Commission that as
16 a legal matter, as well as a practical matter, the
17 Postal Service has not invoked any of those exceptions
18 so that while we could engage in a discussion, an
19 academic discussion about what the meaning of the
20 various exceptions could be and how it might be
21 applied, the Postal Service hasn't invoked them.

22 COMMISSIONER BLAIR: Can a party invoke
23 those exceptions?

24 MR. ANDERSON: Only if they're in the
25 position --

1 COMMISSIONER BLAIR: In your view anyway.

2 MR. ANDERSON: Pardon me?

3 COMMISSIONER BLAIR: In your view.

4 MR. ANDERSON: I think Intervenors certainly
5 have a right to bring evidence and bring argument to
6 the Commission and to seek an outcome based upon that,
7 but it seems to me that the Postal Service is uniquely
8 obligated and obligated by law as well to justify
9 workshare discounts that it propounds, and in this
10 instance it hasn't done that.

11 COMMISSIONER BLAIR: Thank you.

12 MR. ANDERSON: May I add, former Chairman,
13 Mr. Blair? Mr. Blair, if I may add just one more
14 comment?

15 In response to Mr. Scanlon's observation
16 that the Postal Service has submitted workshare
17 discount information that is in two different formats,
18 one using a benchmark and one not, or linked and
19 delinked in his terminology, as we said in our written
20 comments that's not the case because the base rate
21 that they have calculated does not use the appropriate
22 benchmark and all the other rates are pegged to that
23 so there is in fact a failure here to do the
24 calculation.

25 In fact, it might be appropriate for the

1 Commission to request that proposers do that
2 calculation, but that's not necessary for the purposes
3 of the Commission's finding that in fact there's a
4 violation here.

5 COMMISSIONER BLAIR: Okay. Thank you.

6 CHAIRMAN GOLDWAY: Any other questions?

7 COMMISSIONER BLAIR: Just one short one for
8 Mr. Reisner. You had mentioned that you thought that
9 the Commission should broaden the strike zone and give
10 the Postal Service more flexibility.

11 Is this in terms of postal and nonpostal
12 products? Overall how does this fit into the whole
13 compliance determination process since we're looking
14 at the compliance determination for 2009?

15 CHAIRMAN GOLDWAY: Can you use the
16 microphone, please?

17 COMMISSIONER BLAIR: Can you approach?

18 MR. REISNER: I think the issue on the
19 compliance determination is in the invitation letter
20 the invitation was to talk broadly about the Postal
21 Service in general.

22 I think with respect to compliance it may be
23 a narrower question, and I think that that's true in
24 general but I think it's wise, and I think several
25 other commenters have said the same thing, to be able

1 to take a broad view and to be able to look at both
2 the revenue side, as well as the cost side.

3 I think there are three very straightforward
4 questions. The first question is are the rules and
5 regulations that have been created and the processes
6 that have been created under PAEA rules and processes
7 that fit now that we're in a marketplace in which
8 there's severe financial crisis and whether that is
9 encouraging to overall creation of new product and
10 services.

11 The jury is certainly out as to what's going
12 to happen as the economy recovers and the mailing
13 community responds to that, but to the extent that
14 that can be facilitated, that a response that creates
15 jobs and helps the country recover can be facilitated
16 by a vigorous Postal Service, I think that's what is
17 in the broad goal and that's what everyone is seeking
18 to do.

19 The second question is okay, so if within
20 PAEA the rules are essentially rules that have to be
21 created as they are, and I used postal and nonpostal
22 products as a good example of where the Commission has
23 a public record that is very fresh and recent, but
24 it's really a broader question than that as to filing
25 of NSAs, as to filing of products, any number of

1 different things.

2 If you say this has to be because this is
3 what the law directs us to do then I think that second
4 question goes to this question of the Commission from
5 time to time, as Commissioner Langley just commented,
6 being asked in its expert opinion to comment upon how
7 are things functioning by Congress, and I think
8 several of us this morning have commented that we
9 would encourage you to take a very broad view with
10 respect to that to give the Postal Service a shot.

11 When I talk about this what I'm really
12 talking about is what are the signals that you send to
13 postal employees who've got a great idea, to postal
14 managers who are charged with creating new products,
15 to mailers who've got ideas about what it is that
16 could be adjusted and how that would work, and those
17 signals is really the third category, and I used that
18 gray area of public/private partnerships as one of
19 those untried areas.

20 But to the extent that it's really not your
21 rules and it's not the law then maybe even there's
22 this broad category of public policy where the
23 Commissioners and where the Commission staff has for
24 years participated in providing -- in contributing --
25 to the comments of the community. That's what I had

1 in mind.

2 COMMISSIONER BLAIR: Thank you.

3 MR. REISNER: Thank you.

4 CHAIRMAN GOLDWAY: Commissioner Acton?

5 COMMISSIONER ACTON: Thank you, Madam
6 Chairman. I just want to say that we read your
7 commentary and your testimony with great interest, but
8 it's very compelling to have you here today and
9 talking with us personally making these cases for your
10 individual and collective stances.

11 Mr. Cerasale from the Direct Marketing
12 Association mentioned the expectation that the Service
13 will be bringing a case for change in frequency of
14 delivery to us sometime in the near future, and I'm
15 wondering if perhaps the Service has done any outreach
16 to his organization in anticipation of that
17 preparation?

18 MR. CERASALE: Yes, Commissioner, the
19 Service has. It's met with me and it also has met
20 separately with many members, met with other
21 associations discussing part of the plan. It's
22 changing. They've listened to what we have to say.
23 There have been discussions.

24 I think one of the big things that we have
25 not heard finally is the difference that we heard in

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1 congressional hearings of the PRC's determination of
2 what elimination of one day of delivery would save the
3 Postal Service versus the Postal Service
4 determination. That's really a key in part for DMA as
5 an association taking a look at whether or not losing
6 this day of delivery is, for want of a better term,
7 worth it.

8 So they've come forward and talked to us,
9 and one of the things that's a major question that
10 we've raised is is it delivery only? Is it processing
11 as well that would be reduced and does that change the
12 nature of the savings? Does it change the nature of
13 delivery on the Monday or on the Tuesday during a
14 three day holiday when it comes?

15 Those kinds of things are still up in the
16 air, but they have talked to us and so forth, and we
17 have not yet seen -- I haven't seen what I've been
18 told is a final plan, and I think we await that as I'm
19 sure you await that as well.

20 COMMISSIONER ACTON: Thank you, Mr.
21 Cerasale. I have a question too about comments by Mr.
22 Scanlon and Mr. Myers regarding the question of
23 workshare discounts and how we match those with
24 avoided costs.

25 I believe their endorsement is that the

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1 Commission avoid addressing in great detail this
2 matter in the present ACR and instead taking it up in
3 some sort of resolution with the proceeding with
4 respect to linkage. Is that what you're saying?

5 MR. MYERS: Again for PSA here's what
6 troubles me about Mr. Anderson's comments, which were
7 very good. This is not a proceeding in which we
8 should be debating the appropriate --

9 CHAIRMAN GOLDWAY: Do you have your
10 microphone on?

11 MR. MYERS: What did I do? This is not a
12 proceeding in which I believe we should be debating
13 the various methodologies that should be used for
14 measuring costs avoided or much of anything else. You
15 have other venues for that. You have one that's
16 ongoing which PSA is not participating in having to do
17 with workshare discounts or first class mail, linking
18 and delinking and that sort of thing. I think that's
19 where that should be.

20 APWU also recommends that you measure costs
21 avoided, if I've got it right, on a cumulative basis
22 rather than on an incremental basis. That may affect
23 some of the discounts or the measurements that if
24 adopted, and that has been rejected in the past, that
25 the established methodology is the incremental,

1 measuring the incremental differences. That could
2 affect some discounts that PSA members enjoy.

3 We believe in efficient component pricing.
4 I'd refer you back to Tim Mays' cross-examination of
5 Dr. Panzer in R2006. I think it was pretty clear from
6 that.

7 We typically are concerned with discounts
8 where it does not appear on the record that the Postal
9 Service is giving our members enough for the work they
10 are doing, that the discounts are significantly less
11 than the costs avoided. In that case your rules
12 provide that the Postal Service is supposed to make a
13 justification, an explanation such as Mr. Anderson is
14 suggesting they didn't make in this case.

15 One last point on the exceptions, and when
16 all else fails I usually look at the law. I'm a big
17 one right now for predictability and stability of
18 rates. I don't want to see anything changed.

19 We had a Parcel Shippers meeting yesterday,
20 and they're afraid that their budgets are going to go
21 out the window because some rates are going to be
22 changed either because of the Postal Service's
23 financial condition or a product appears to be under
24 water based on the data that you have before you, and
25 there somebody said -- Mr. Olson, who has analyzed

1 that in detail -- there are 11 products I think he
2 said. It amounts to about \$1.7 billion.

3 In any event, with regard to the workshare
4 discounts, 3622(e), and the exceptions it says that
5 the Postal Regulatory Commission shall ensure that
6 such discounts do not exceed the cost the Postal
7 Service avoids as a result of a workshare activity
8 unless the reduction or elimination of the discount
9 would impede the efficient operations of the Postal
10 Service.

11 I would submit right now that any tinkering
12 with the rates runs the risk of impeding the efficient
13 operations of the Postal Service and we just shouldn't
14 do it. Things are just too serious right now.

15 CHAIRMAN GOLDWAY: But if we don't do
16 something then they're \$1.7 billion in the red. You
17 know, a private company would have to adjust its
18 rates. It couldn't go on providing rates at a loss.

19 MR. MYERS: They have submitted a plan for
20 this calendar year, for this rate cycle, which they
21 believe is sufficient to get them through, and we all
22 agree -- I didn't comment on it in my preliminary
23 remarks -- that we need to work at the other end of
24 Pennsylvania Avenue to get the retiree health benefits
25 payment situation straightened out.

1 What I'm telling you is that the effects on
2 the mailing industry of changes in the rate structure
3 during this calendar year, which they have every right
4 to believe if they looked at (b) (2), which said rate
5 predictability and stability is the second objective.
6 It's the second thing in the Act. I think they have
7 the right to rely on the fact that they were told
8 there would be no price increases during 2010 for
9 market dominant products.

10 They've taken the ones for competitive
11 products and they've worked those into their budgets,
12 but let's hold the line for 2010. Look at it. Do
13 your job. Suggest to the Postal Service -- I think I
14 said earlier that they should welcome and certainly
15 consider and take into account any recommendations you
16 make as a result of this deep dive into the situation,
17 but let's not change anything right now.

18 COMMISSIONER BLAIR: Mr. Myers?

19 MR. MYERS: Yes?

20 COMMISSIONER BLAIR: If I can just
21 interject? You cited that fourth exception, the
22 reduction or elimination of the discount would impede
23 the efficient operation of the Postal Service. Who
24 has the burden on that? Who has the burden of proving
25 that? Is there a burden of proof of that?

1 Is it an assertion by the Postal Service?
2 Is it something the parties should comment on? Is it
3 something the Postal Service should provide lengthy
4 justification? What advice would you give the
5 Commission on evaluating that?

6 MR. MYERS: This command runs to the
7 Commission, which is why I read it, and it says that
8 the Postal Regulatory Commission shall ensure. I
9 don't know that there is a burden that you -- you're
10 going to have to have some sort of record or take
11 public notice of something out there to justify a
12 finding in that regard.

13 But it's the Postal Regulatory Commission
14 that's required to ensure that it will not impede the
15 efficiency, that a reduction or elimination of the
16 discount would not impede the efficient operation of
17 the Postal Service. A drop in volume as a result of
18 changing rates seems to me could very well have a
19 detrimental effect on the efficiency of the Postal
20 Service operations.

21 COMMISSIONER BLAIR: I appreciate that.

22 CHAIRMAN GOLDWAY: Any other questions?

23 MR. SCANLON: I would just add a response to
24 the initial question that before you even get to the
25 statutory workshare exceptions of the 3622 you first

1 address the issue of where you're measuring from.

2 The Postal Service has taken the position
3 that because single piece and presort at least within
4 first class mail are separate products that under the
5 statute, 3652(b), they're required to measure those
6 separately. That's kind of a threshold determination.

7 The genesis for RM2009-3 which arose in the
8 last two ACD contexts was that the Commission didn't
9 have enough time in the context of a pricing
10 adjustment or an ACD environment to make that
11 determination and so a separate proceeding was created
12 for that purpose. So, yes, our position is that that
13 should be handled in a separate proceeding. The issue
14 has been briefed and submitted to the Commission.

15 COMMISSIONER ACTON: Okay. Thanks,
16 gentlemen.

17 MR. ANDERSON: Madam Chairman, may I be
18 heard on this point?

19 CHAIRMAN GOLDWAY: Sure. This is a
20 conversation.

21 MR. ANDERSON: Thank you. I'd like to
22 observe that the Commission, as I said before, has
23 relatively little flexibility on the issue of fighting
24 a violation on a workshare discount, and it's not
25 accurate to say that the Commission has not addressed

1 this.

2 The Commission has actually addressed it
3 over and over again and has repeatedly found the
4 methodology that the Postal Service is seeking to
5 leave behind is the appropriate methodology so that
6 the purpose of the RM proceeding was to find a way to
7 get past our ACR2008.

8 But I'd like to make two points. One is
9 that the Commission has more flexibility in a remedy
10 than it does in the finding of the violation. If you
11 look at 3662, you have to have an appropriate remedy.
12 We are cognizant of the importance of rate stability,
13 and that's something obviously the Commission has to
14 be cognizant of as well, but you also have to be
15 cognizant of the law and of the legal requirement and
16 of the clarity with which the workshare discount
17 methodology has been embraced by the Commission in the
18 past and has instructed the Postal Service to observe.

19 That's the first point I wanted to make is
20 that the flexibility may be in the remedy. The other
21 point I want to make, and I'd like to pay my respects
22 to Commissioner Blair for his leadership as chairman
23 in bringing the regulatory framework of the PAEA into
24 life and into being and embodying it in a useful set
25 of regulations.

1 Also in that context I'd like to observe
2 that how the Commission deals with this issue will be
3 another step in the evolution of its relationship to
4 the Postal Service. Bear in mind the Postal Service
5 has repeatedly not followed the Commission's
6 directions on this issue, and we submit to you that
7 it's time for the Commission to assert itself as a
8 regulatory agency on this point.

9 COMMISSIONER ACTON: Mr. Anderson?

10 CHAIRMAN GOLDWAY: Mr. Anderson, I think
11 Commissioner Langley has a question for you.

12 COMMISSIONER LANGLEY: Yes. I just have a
13 quick question. You heard Mr. Myers comment that it
14 is more the Commission that has the determination
15 whether or not a reduction or elimination of excessive
16 discounts would impede the efficient operation of the
17 Postal Service. I would assume you would disagree
18 with that comment?

19 MR. ANDERSON: Only in part. I mean, it's
20 for the Commission to make the determination, but the
21 Commission can't create it's own record.

22 COMMISSIONER LANGLEY: The Commission does
23 not bring forth that reason for --

24 MR. ANDERSON: Precisely. Yes. Thank you.
25 I'm sorry to interrupt.

1 COMMISSIONER LANGLEY: I mean, that is part
2 of the law as far as I was reading it.

3 MR. ANDERSON: Yes. I think the --

4 COMMISSIONER LANGLEY: I'd like your view on
5 it.

6 MR. ANDERSON: Thank you. The law is clear
7 and mandatory, and the Commission is required to
8 ensure -- challenge is the statute language -- that
9 the workshare discounts do not exceed costs avoided
10 unless, and there are exceptions there.

11 But the factual record -- it is not the
12 burden of the Commission obviously to make that
13 factual record. The burden I submit is on the Postal
14 Service because the law is clear that the Postal
15 Service is required to submit information to the
16 Commission to justify its workshare discount and that
17 it has failed to do.

18 Commissioner Blair and I had a dialogue
19 earlier about the role of other parties perhaps, but I
20 submit it is really the Postal Service that's in a
21 position and has the obligation to come forward with
22 the evidence that might justify a finding by the
23 Commission.

24 COMMISSIONER LANGLEY: Which is flexibility
25 provided in the law with the three different

1 exclusions there, I mean, or waivers that could be
2 used by the Postal Service in exercising further
3 pricing flexibility.

4 MR. ANDERSON: Well, those again are taken
5 from the decisional authority, from the jurisprudence
6 of this body. The Commission has a long history of
7 dealing with the issue of workshare discounts and when
8 they might or might not be redressed if they're
9 excessive.

10 The Congress is well aware of that and the
11 legislative history shows that the Congress was well
12 aware of the Commission's decisional authority on the
13 issue of workshare discounts and the exceptions that
14 the Commission had already embraced and discussed, so
15 there's a lot of authority on this. This wasn't cut
16 from whole cloth by Congress. This was really an
17 adoption by Congress, a codification, if you will, of
18 the teachings of the Commission from past years.

19 COMMISSIONER LANGLEY: Thank you, Mr.
20 Anderson. Thank you, Madam Chairman --

21 CHAIRMAN GOLDWAY: Sure.

22 COMMISSIONER LANGLEY: -- and Commissioner
23 Acton for letting me piggyback on your time.

24 CHAIRMAN GOLDWAY: Okay. Mr. Acton has one
25 more question.

1 COMMISSIONER ACTON: One last one, Mr.
2 Anderson. I'm sorry. You mentioned earlier this
3 question of the overfunding on the health care
4 benefits and how it may relate to the Service's
5 efforts to redo its network. Can you talk a bit more
6 about the nexus of those?

7 MR. ANDERSON: Well, \$75 billion, if
8 applied, if the Postal Service were permitted to apply
9 it for its own use, would not only fund retiree health
10 benefits, the present value of those, but would
11 provide flexibility for the Postal Service to do a lot
12 of other things. It would provide rate relief
13 perhaps.

14 But I think perhaps as important as rate
15 relief would be an opportunity to implement their
16 transportation network in the manner that they've
17 planned. There was an entire lengthy process before
18 this body concerning END, the Evolutionary Network
19 something. Development, I guess.

20 But that whole process with the regional
21 transportation centers has been now left behind due to
22 the exigencies of financial need, caused by financial
23 need. In part I'm sure that network was designed
24 perhaps for a more robust economy and a more robust
25 mail stream, but in part it was designed in a way to

1 be most efficient.

2 And many of those efficiencies I think are
3 going to be lost if the Postal Service cannot afford
4 to purchase and develop new facilities and place
5 facilities where it most needs them as opposed to
6 where it has them. It's now adapting older facilities
7 rather than providing new facilities, and I think
8 that's unfortunate.

9 Again, I'm going back to what many others
10 have said here today, which is that we need to take a
11 longer view here, and I think that the capital
12 starvation due to the overpayments and overfunding --
13 in part due to the overpayments and overfunding --
14 into the retirement plans threatens the long-term
15 viability of the Postal Service so that's an issue
16 that should be addressed. I hope I've answered your
17 question, Commissioner Acton.

18 COMMISSIONER ACTON: Thanks very much.

19 CHAIRMAN GOLDWAY: Vice Chairman Hammond?

20 VICE CHAIRMAN HAMMOND: Thank you, Madam
21 Chairman. As each Commissioner asked another question
22 I got to cross one off of my list. It works good
23 being on this end at times. But I did have what is
24 more of a general question if it's time now to see if
25 anybody wanted to comment on that.

1 CHAIRMAN GOLDWAY: Sure. I will ask a
2 couple of specifics, but add your list of general
3 questions and then we'll get to that.

4 VICE CHAIRMAN HAMMOND: Okay.

5 CHAIRMAN GOLDWAY: What is your general
6 question?

7 VICE CHAIRMAN HAMMOND: Well, I did want to
8 know if anyone wanted to comment on whether they
9 hadn't been able to adequately understand or comment
10 on the annual compliance report because of a lack of
11 information that was contained in that report from the
12 Postal Service.

13 I know we have a formal questioning process
14 in place for information, but if anyone cared to
15 discuss problems that they had in the Postal Service
16 transparency or refusing necessary information with
17 regard to this report. Does anybody want to comment
18 on that?

19 CHAIRMAN GOLDWAY: Okay.

20 VICE CHAIRMAN HAMMOND: Any problems that
21 you had?

22 CHAIRMAN GOLDWAY: We have two general
23 questions, but I will ask I have I think a few
24 specific questions. Let's see if I can get my notes
25 straight.

1 I guess Mr. Reisner first. Can you give me
2 some specific examples of products that appear to be
3 nonpostal that the Postal Service looks likely to
4 enter in on that the narrow restrictions of the law
5 are making it impossible to engage in?

6 MR. REISNER: Well, honestly I wouldn't
7 presume to get in between you and the Postal Service
8 in terms of what the nature of your conversation with
9 them at this time is. I think that there are a number
10 of products and services that relate to connecting
11 mail to the internet that are interesting ideas that
12 people talk about, and whether it's creating a class
13 of mail that's related to the intelligent mail
14 barcode, that's certified, or that's secure. You've
15 talked about a number of things yourself, Madam
16 Chairman, related to voting issues where certification
17 would be extremely important.

18 It could be that there are electronic
19 services that are associated with that kind of product
20 where it just clearly falls outside of the category of
21 what a postal service is today given the definition
22 that was included in the beginning of PAEA. So, under
23 those circumstances, perhaps there needs to be some
24 sort of joint venture, public/private partnership
25 between, or any nature, any number of things. It

1 could be under contract, it could be a variety of ways
2 of solving those things. My only comment, really, is
3 a broad comment, which is it's very murky as to what
4 the rules would be and how that would apply,
5 particularly issues like can the private sector do it?

6 Of course the private sector can do all
7 sorts of things, especially when it's enabled by a
8 public institution that has the kind of breadth and
9 scope that the postal service has, and so you get into
10 a category where you're creating something that's in
11 the public interest. Take related to voting, which is
12 something where you've been a strong advocate. Voting
13 on public referenda, where you could create many
14 creative ways in which you could draw more people in
15 and increase participation. But is it public, you
16 know, is it something the private sector should be
17 doing, et cetera? I think this is the kind of area
18 where collaboration is warranted and would be useful,
19 and it would help clarify things for everyone on the
20 revenue side.

21 CHAIRMAN GOLDWAY: And then I'd like to ask
22 Mr. Cerasale, I understand the concern for us all to
23 be looking at the long term viability of the postal
24 service, and certainly that's our goal, but the postal
25 service has told us that it won't meet its payroll in

1 October of 2010 without legislative action, and so the
2 question is how do we manage in the short term to get
3 to the long term? You know, I don't know how to do
4 that, and without some very drastic action that will
5 disrupt the mailing community, so do you have any
6 ideas on what we should be considering to manage a
7 very serious problem?

8 MR. CERASALE: Yes. I'm a little bit too
9 close there. Excuse me. One of the roles is you
10 report to Congress. I think, and others have
11 discussed this today, it's very important that the
12 Commission outline to the Congress the dramatic, the
13 substantial burden that the payment schedule that was
14 devised in 2006 because of the economic situation that
15 the country finds itself, there has to be some relief
16 coming from the Congress. So I think that's one of
17 the keys that has to happen. Now, we're all working,
18 all of us.

19 We may have some disagreements here on lots
20 of things, but I think all of us in the postal
21 community, that's the postal service, Commission,
22 mailers and employee groups, all agree on this. I
23 think it's imperative, and you have this opportunity
24 and the deference given to you from the Congress to
25 raise that point. We need some help by September 30

1 of 2010. It may be the same kind of help that was
2 given last September right at the end of the year when
3 it doesn't score for budget purposes that there is a
4 one term relief. The other, of course, is working on
5 the \$75 billion that many of us are in the process of
6 pushing and urging, but in the budget process of the
7 government, that is not as likely for this fiscal year
8 as it is, hopefully, in 2011 that we can go forward
9 and try and work on that. So I think that's one thing
10 that you must do.

11 I think another is to try and help the
12 postal service as they look to try and increase volume
13 to try and bring back some of the volume it lost as
14 the economy starts to come out of the doldrums to try
15 and be part of that rise in the economy, to have the
16 postal service ship also lift with the rising tide.
17 It may be as they come forth with a potential for new
18 summer sales to try and drive volume and so forth that
19 those are things that you should look at. The postal
20 service looked at the idea of raising rates, trying to
21 come in and ask for an exigent rate increase to raise
22 rates above the rate of inflation for market dominant
23 classes and it sided against that in this time, in
24 this -- and we can agree or disagree whether or not
25 the requirements for an exigent case were met.

1 Let's assume that they were, and that's not,
2 please don't hold me to that. DMA thinks that they
3 were, but let's assume that they were. The postal
4 service decided this is not the economic time to do
5 this, that we think the loss and the harm to the
6 mailing community, the payors, the people who pay the
7 budget, would be too great and let's just try to get
8 through this year and try and pull our way through.
9 The postal service, I think we have to give them that
10 kind of deference. One of the things I said back in
11 2006 is that management flexibility for the postal
12 service gives its management an opportunity to
13 succeed, and also an opportunity, sadly, to fail, but
14 we need to give them that opportunity and look at it
15 and work with Congress.

16 I think the biggest role for you here that
17 we see, that the DMA members see, is to tell Congress
18 we have to fix, even if it's in just the short term,
19 this payment schedule for retiree health benefits.
20 We're going to be working on trying to say, hey,
21 there's a \$75 billion pot that can, quoting Mr. Olson,
22 "fix the problem". I'm not sure it totally fixes
23 everything. The postal service should keep working
24 forward, but we'll be working to try and push on that.
25 I think we have to be more pragmatic and look at

1 potentially another solution in September, similar to
2 the one that we had in calendar year 2009.

3 CHAIRMAN GOLDWAY: Thank you. If it's all
4 right with you, Commissioner Langley, I'd like to take
5 Vice Chairman Hammond's question first which kind of
6 covers an area that we haven't really heard from the
7 audience about, and I'd be open to anyone here who
8 would like to comment on that question. So the
9 question is could you give us your view on whether the
10 annual compliance report filed by the postal service
11 was understandable, was transparent, was comprehensive
12 enough, truly reflected their operations? After all,
13 that is the primary document on which we will find our
14 determination, although we have some other
15 supplementary documents filed. So, and I see Mr.
16 Stover volunteering to ask a question, and Secretary
17 Grove has the microphone. She'll walk around so that
18 makes it easier.

19 MR. STOVER: Thank you, Madam Chairman.
20 This may be a contribution that has as much to do with
21 the Commission's own regulations as with the report
22 that was filed in December of last year. Let me start
23 by saying that one of the provisions defining the
24 annual compliance report requires it to analyze, among
25 other things, the postal service's revenues in

1 sufficient detail to establish the compliance of the
2 rates with the statutory standards and the standards
3 of Chapter 36, and that the report is to use
4 methodologies established by the Commission. We would
5 like to raise the question of whether these revenues,
6 which are determined in large part by volumes as well
7 as rate levels, and the volumes are obviously
8 determined in large measure by the reaction of various
9 mailer groups, types of mailers, under varying
10 economic conditions to price, that is to say we are
11 interested in the elasticity estimate methodologies
12 employed by the postal service.

13 Now, it's my understanding that in the
14 current docket detail on this was provided several
15 weeks after the filing of the compliance report at the
16 end of December. There were numerous changes in the
17 methodology. I will surprise no one by saying that I
18 don't understand them, but Dr. Clifton tells me that
19 he doesn't understand some of them either and that is
20 grounds for grave concern. My suggestion, therefore,
21 is that the Commission may want to look into making
22 the validity, and reliability, and suitability of the
23 price elasticity calculations a part of the compliance
24 process, just the way you do with the rates, the
25 operating statistics and all of the other CRA, and

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1 billing determinant and similar material that you now
2 require. Thank you.

3 CHAIRMAN GOLDWAY: Thank you. Anyone else
4 who would like to comment on the ACR?

5 MALE VOICE: Just briefly, Madam Chairman.
6 The presentation by the postal service of its service
7 performance -- and I know the Commission historically,
8 until recently, hasn't shown a great deal of interest
9 in service performance and I hope they will continue
10 to show increasing interest in that area because I
11 think in the long run, improving service is going to
12 be the basis for saving the postal service. In any
13 event, I think the presentation of the various data
14 that we're presented borders on contemptuousness by
15 the postal service. It's scattered, it's not
16 organized, there's a lot of data available that
17 weren't presented, they were erased from the website.
18 I just think enormous progress could have, and should
19 have, been made this year already. I hope that you'll
20 certainly put some pressure on them to improve next
21 year.

22 CHAIRMAN GOLDWAY: Thank you. Anyone else
23 want to comment on the quality of the ACR?

24 MR. ANDERSON: Darryl Anderson for the APWU.
25 As with Mr. Stover, I would need to defer to an expert

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1 economist on this issue, and I would ask for leave to
2 file written comments on that subject, along with our
3 reply comments.

4 CHAIRMAN GOLDWAY: I hope that our
5 discussion does encourage additional comments if you
6 feel they're needed in the remaining time we have to
7 submit comments on the ACD. We did extend the
8 deadline as a result of the storms and expect to hear
9 from people. Thank you. Okay. So now we can go back
10 to the other question that Commissioner Langley asked,
11 which was a better discussion about what any of you
12 might mean by more management flexibility. Is there
13 anyone who would like to volunteer?

14 MR. OLSON: Bill Olson from Valpak. I
15 wanted to say that I think this is an illustration of
16 why your schedule is very good to put the reply
17 comments after because Commissioner Langley's question
18 causes me to think of more response than I can make in
19 this short amount of time, so with your permission,
20 I'll address that in the reply comments at more length
21 because I think it's important that we begin with what
22 the Commission's role is in terms of the statute, what
23 annual reports are required, what special reports are
24 required, what they're looking to you for.

25 Most agencies feel an obligation to

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1 recommend changes in organic statutes that they
2 operate under if they think they're necessary.
3 Sometimes that's provided for in law, sometimes it's
4 just assumed. I would like to do that, but I think
5 what I'm basically saying is that 39 U.S.C. has
6 several places where it's quite clear that the running
7 of the company is vested in the board of governors and
8 in the postal service. 202 and 401 are two of the
9 sections that do that. What we want to do is make
10 sure that everyone plays their proper role under the
11 statute. If that happens, I think the system works,
12 and therefore, I think there's an excellent question,
13 and we'll give some specifics because you have not
14 because you ask not. So we will ask.

15 CHAIRMAN GOLDWAY: Great.

16 MR. MCLAUGHLIN: Tom McLaughlin. Following-
17 up on Bill Olson, and I guess I'm also bootstrapping
18 on Jerry Cerasale's response to your question, Madam
19 Chairman, about the conundrum of meeting payroll and
20 sort of rolling the dice on legislation because I
21 think that does relate to management flexibility, the
22 postal service's decision not to file an exigency case
23 this year. The fact is is that we're in a marketplace
24 out there right now that is extremely volatile. It's
25 volatile for letter shops, printers, mailers. It's

1 their own customers, my client. They, in turn, have
2 their own customers who are retailers or other
3 advertisers.

4 They're all under tight budget constraints,
5 they're trying to find ways to cut costs, they're
6 trying to find alternate distribution channels right
7 now outside the mail. Many of the SMC mailers, for
8 example, they have not been raising their rates to
9 customers. In fact, some of them in certain cases
10 have been cutting their rates to customers. Why?
11 Because if they don't, the advertiser either can't
12 afford it or is going to go somewhere else. So I
13 think in this kind of an environment the notion of
14 filing a 10 percent rate increase because we don't
15 know whether we're going to get relief on legislation
16 is really the worst possible thing to do because
17 you're disrupting the marketplace at a time when the
18 marketplace is very fragile and you may actually end
19 up having -- the old price elasticities that we looked
20 at in the past are based on historical data going back
21 when things were rosy.

22 Those almost become irrelevant when you've
23 got an economy like this right now. So I think it's
24 very important to try to maintain stability, to give
25 management the flexibility to make that determination

1 of what they believe is in their best interest. It is
2 true we've got a chicken and egg problem about should
3 we raise rates or hope on legislation? Or maybe it's
4 a little game of chicken, I guess. Is Congress going
5 to give us the money? I think that we have to play
6 that game and let it play out, as opposed to having
7 the Commission jump in and say wait a minute, we've
8 got to raise rates. This is just not the right time
9 to do that.

10 CHAIRMAN GOLDWAY: Interesting. Anyone else
11 like to comment? Would the public representative like
12 to make some comment?

13 MR. RICHARDSON: Well, I'll address the
14 comments that you just heard. As a general matter, I
15 want to make it clear that the public representative
16 did a study which did not recommend rate increases,
17 but was providing the opportunity for the Commission
18 to understand what types of rate increases might be
19 needed in three different scenarios, where there was
20 no relief granted by Congress, or some partial relief,
21 or total relief following the lines of something like
22 the OIG report. I would point out that there are
23 other avenues available to the Commission besides a
24 rate increase immediately and they were mentioned in
25 our filing about perhaps a temporary rate increase or

1 a conditional rate increase in the event Congress does
2 not act in time.

3 This would forestall the postal service's
4 problem, which they clearly stated in their integrated
5 financial plan that they would be down to \$200 million
6 of cash the first week of October 2010, which is
7 obviously an untenable situation. I don't know who
8 would not get paid. I suppose the U.S. Treasury would
9 not get paid, although the alternative is to pay the
10 U.S. Treasury and not to pay the truckers that are
11 transporting the mail or not pay their employees. It
12 would be a very difficult situation. I do want to
13 point out, also, that even if Congress does eliminate
14 the entire payment in September, our study indicates
15 on page 20 that for FY 2011 there would still be a
16 very difficult cash situation.

17 They would only have \$3.7 billion of working
18 capital at the end of 2011. So it does not solve the
19 problem by any means and there is a very difficult
20 cashflow situation for the postal service. I
21 understand that nobody wants a rate increase.
22 Representing the general public, I'm torn between
23 representing those who I know would not want a rate
24 increase, including the Aunt Minnies of the world,
25 although they have not come with a groundswell of

1 objections to any rate increase, and then there's the
2 taxpayer would have to bear the burden of any
3 additional loans that the postal service would receive
4 by way of subsidy or loans.

5 We did indicate that to adjust the loan
6 level to account for inflation since 1992 when the act
7 established the current loan limits, that could be
8 increased from the current \$3 billion a year to, I
9 believe it was \$4.9 billion, would be an adjustment
10 for inflation, and to increase it overall from \$15
11 billion to \$22.9 billion. If that were done, that
12 would be a relatively simple act on the part of
13 Congress and would relieve the postal service of at
14 least the initial and tight situation it's in and will
15 be in at the end of this fiscal year.

16 It seems to me that if Congress does
17 eliminate the retiree health benefit payments at the
18 end of fiscal year 2010 the calculation at a 3.1
19 percent increase, both in 2010 and 2011, is not
20 particularly unreasonable given the fact that there is
21 no increase this year because the cost of living has
22 not increased, and that people could probably live
23 with that. Obviously, budgets have been established,
24 but it seems to me that incrementally relatively minor
25 increases in the rates over time will, in the long

1 term, have a beneficial effect on the cash situation
2 of the postal service and will eventually work its way
3 out as the postal service is able to save money by
4 cutting staff over a longer period of time and the
5 volumes readjust as the economy comes back.

6 I think it was important that I raise a
7 short term situation, I think, Madam Chairman, that I
8 agree entirely that the issue really is what's going
9 to happen the first week of October? I was concerned
10 that the postal service was playing Russian Roulette
11 with its finances, and perhaps with the mailing
12 community. That's why I raised this issue. At this
13 point, I have no particular recommendation, although I
14 thought it was important, too, to bring forth the idea
15 that Congress, I believe, when they passed the PAEA
16 did give this agency clear authority to act and adjust
17 rates as it sees fit and with relatively limited
18 procedural processes once you find that the FY 2009
19 rates were noncompliant.

20 I think you have a lot of authority, a lot
21 of leeway to act as appropriate. I've always stated
22 that in my comments, as appropriate. That's way above
23 my pay grade to make that decision, but that's, I
24 thought it would be useful to bring these facts to the
25 Commission and to the mailing community of the

1 magnitude of the rate increase that might be needed in
2 different scenarios. Thank you.

3 CHAIRMAN GOLDWAY: Thank you. Questions
4 from the bench? We'll begin with Commissioner Blair.

5 COMMISSIONER BLAIR: Thank you, Madam Chair.
6 I find Mr. Richardson's comments to be rather activist
7 in nature and I was wondering if others out there in
8 the community wish to provide a comment on his
9 interpretation of the authorities that the PAEA
10 granted the Commission. Those of you who are active
11 in the postal reform efforts over the last 10 years,
12 your views on that would be particularly appreciated.
13 Mr. Levy?

14 MR. LEVY: Thanks, Commissioner Blair. I'll
15 be brief. We will be submitting reply comments
16 addressing that very issue, and so I'm not going to
17 repeat them beyond to say we respectfully do disagree
18 with the public representative. We do not believe
19 that either the statutory scheme or the postal
20 service's present circumstances give the Commission
21 authority to in effect sua sponte implement what would
22 amount to an exigent rate increase that the postal
23 service has not asked for, or, for that matter, would
24 not --

25 COMMISSIONER BLAIR: Would you explain for

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1 those in the audience that are not proficient in their
2 Latin what sua sponte might mean?

3 MR. LEVY: I should just shoot myself. I've
4 always vowed never to use legal Latin. On the
5 Commission's own initiative, the pack of Boy Scouts
6 who help the little old lady across the street and the
7 mother said why so many of you? Well, she didn't want
8 to go. The postal service doesn't want to go across
9 the street to an exigent rate increase, and for the
10 reasons we'll explain, we believe that the Commission
11 does not have authority to impose it. That doesn't
12 leave the Commission without a role. Commission has a
13 critical role, we believe, in advising Congress of a
14 think set, a particular action that should be taken
15 that might involve legislation. The Commission, like
16 everybody else in this room, is bound, we believe, by
17 what Congress has done until Congress changes it.

18 CHAIRMAN GOLDWAY: Other comments?

19 MR. STOVER: Thank you, Madam Chairman.
20 David Stover for the Greeting Card Association. I
21 wanted to comment briefly on something that Mr.
22 Richardson said a moment ago, but I think it has
23 broader implications. Mr. Richardson mentioned that
24 the Aunt Minnie's had not mounted a groundswell of
25 opposition. I had thought we could dispense with the

1 litany in the front of our pleading where we say that
2 GCA is the only trade association that represents the
3 household mailer, but I guess we better put it back
4 in. Quite apart from that, Minnie does not mount
5 groundswells of opposition.

6 Minnie goes out and buys a laptop and does
7 her banking, and her bill payments, and sometimes her
8 bill presentment too, on line when she decides that
9 the postal service is no longer affordable. I think
10 we can understand that a 50 cent rate, to use the
11 example given in the last old style rate case by Dr.
12 Claude Martin, is a tipping point for many consumers.
13 The broader point here is really the same one which
14 Mr. McLaughlin was making. You cannot raise rates
15 without worrying about whether you're going to lose so
16 many customers or so much of the volume from customers
17 that you keep that the results will be much less than
18 you expect and will not solve your problem. Thank
19 you.

20 COMMISSIONER BLAIR: Thank you, Madam Chair.

21 CHAIRMAN GOLDWAY: Other questions from the
22 bench? Mr. Acton? Commissioner Acton?

23 COMMISSIONER ACTON: I have one question.
24 Let's presume for a moment that the Commission is
25 inclined to advise Congress on taking some action on

1 unfunded healthcare obligations, making some change in
2 the law. There are competing views from different
3 authorities on exactly how large or how small those
4 obligations may be, so maybe some counsel about how to
5 approach those discrepancies with Congress?

6 MR. MCLAUGHLIN: Tom McLaughlin. I think
7 that's a very good question, and I think that what the
8 Commission really should do in looking at that issue
9 is to, obviously you've already taken a partial look
10 at the sort of what I would call the mathematical
11 calculations on the funding of the retiree health
12 aside from the pension issue, but I think the first
13 thing the Commission should do is to really kind of
14 lay out all of the different ways of looking at it,
15 including the pension overfunding issue, the retiree
16 health issue that you've already addressed in part,
17 all of these, lay them out and sort of make judgments
18 and tell Congress your recommendations on what you
19 believe the appropriate numbers really should be for
20 these, recognizing, you know, the \$75 billion number
21 has come up.

22 We're not going to get \$75 billion from
23 Congress in September. We all know that. However, I
24 think that Congress needs to be aware that that is
25 what the bill is, what the overpayment has been, and

1 that certainly over time it has to be dealt with. The
2 postal service cannot afford to continue going the way
3 it is, and it might be that we have to take it off in
4 bites as opposed to a big feast all at once. I think
5 that the Commission should lay it all out, including
6 the \$75 billion that was referenced in the Inspector
7 General report and the work you've already done on
8 these issues, and let Congress know that this has to
9 be fixed if not entirely all this September, then over
10 a period of time.

11 CHAIRMAN GOLDWAY: Other questions? I have
12 a question on another subject.

13 MR. ANDERSON: If I may?

14 CHAIRMAN GOLDWAY: Yes.

15 MR. ANDERSON: Darryl Anderson. I'd like to
16 say that first of all, I concur with Mr. McLaughlin,
17 but just add that in response to Commissioner Acton's
18 question that there are industry standards and
19 actuarial standards that might provide norms, and that
20 what's extraordinary about the situation we're in is
21 how far Congress departed from those norms in what it
22 imposed on the postal service. Some return to
23 normalcy would be a minimum. In addition, the
24 Commission obviously will observe the affects of the
25 recession on the postal service, and I think that

1 provides a basis for relief even from what a normal
2 company might do under normal circumstances. We're in
3 exigent circumstances, I think, not to use the legal
4 term, we're in dire circumstances, I think, as the
5 Chairman may have said, and that's an additional
6 reason for relief here.

7 CHAIRMAN GOLDWAY: I have one specific
8 question for the public representative and then a
9 general question, if I might. The one specific
10 question is in your interpretation you give the
11 Commission wide latitude with regard to adjusting
12 rates if we find that the postal service is not in
13 compliance. I'm more focused on the specific areas of
14 the law in which we have to make findings with regard
15 to rates covering costs and work sharing discounts.
16 Do you believe that the Commission is empowered to
17 make immediate adjustments on those discrepancies with
18 regard to changing rates to cover costs or reduce work
19 share discounts in the context of this ATD, and, if we
20 are, are we also constrained by the price cap?

21 MR. RICHARDSON: No, I don't think you're
22 constrained by the price cap. The initial question is
23 whether or not you find the rates are compliant or
24 noncompliant. Heretofore, the Commission has not
25 found, violations is not the right word, but not

1 complying with the work share requirements in the act,
2 or not apparently, the discounts are greater than 100
3 percent. The Commission has not found that to be a
4 noncompliant rate. If you do find that it is a matter
5 of noncompliance, the rates are then unlawful. The
6 act, to me, is very clear. Section 3653 says that
7 finding then is handled as if you found a complaint
8 was justified under 3662, which specifically says for
9 unlawful rates, the Commission has the authority to
10 adjust rates, as appropriate, to lawful levels and
11 gives a specific example to that effect.

12 CHAIRMAN GOLDWAY: And lawful levels does
13 not include the inflation cap in your interpretation
14 there.

15 MR. RICHARDSON: Correct. Correct. I think
16 the inflation cap is more or less irrelevant at that
17 point. Whatever is a lawful level. I mean, it
18 wouldn't make any sense to me if that was the ceiling.
19 It just doesn't make any sense.

20 CHAIRMAN GOLDWAY: Okay.

21 COMMISSIONER ACTON: Well, isn't the premise
22 of the reform regulation price cap regulation? I
23 mean, isn't that a primary sort of driver in the whole
24 reform movement?

25 MR. RICHARDSON: Well, that was a

1 fundamental view. Yes, that is fundamental. However,
2 there's another side of the coin which says if there
3 are extraordinary or unusual circumstances, that the
4 Commission shall have authority to make appropriate
5 adjustments. It seems to me it's a dual role there
6 for the Commission.

7 CHAIRMAN GOLDWAY: And if it isn't price
8 cap, are we still constrained by the various factors
9 and, what is it called, the objectives and factors of
10 the law when we set a price, if we were to set a
11 price?

12 MR. RICHARDSON: Yes, I think you would be.
13 You would be. I mean, those are the policies that you
14 take into account when adjusting the rates.

15 COMMISSIONER LANGLEY: So it's your belief
16 that it is the Commission who can bring forth an
17 exigency increase rather than what some believe that
18 the law gives that authority or that, again,
19 flexibility to the postal service to bring to the
20 Commission for consideration an exigency rate
21 increase.

22 MR. RICHARDSON: I think they're two
23 different parts of the law. One part allows the
24 postal service to bring a rate increase in
25 extraordinary circumstances. The other derives from

1 the Commission finding the rates are unlawful. Once
2 the Commission finds the rates are unlawful or
3 noncompliant, then the findings under 3662 kick into
4 effect, and there, the Commission has apparently
5 unlimited authority. I wouldn't want to push it too
6 far, but it's got to be rational and reasonable, and
7 there it should follow the other policies of the act
8 and show some consideration of all the factors.
9 That's a broad mandate, but I think that's what
10 Congress was doing when it established a price cap.
11 It recognized there had to be a relief valve. It
12 didn't make any sense. I think even when the PAEA was
13 passed people realized that the postal service
14 probably wouldn't be able to make those payments at
15 the time.

16 COMMISSIONER LANGLEY: I would disagree with
17 that. I do believe that Congress felt that the postal
18 service was in the position to be able to make those
19 payments, while I personally think that the schedule
20 is extremely aggressive and imposes a mandate on the
21 postal service that no other federal agency, no
22 entity, really in the public sector has. That's
23 certainly up for discussion, but I do not see that
24 Congress intended the PRC to impose an exigency rate
25 case. I see it as the postal service comes to the

1 Commission. Certainly, looking at deficiencies in
2 rates and compliance with, you know, the applicable
3 laws is something that we have to consider, but a
4 discussion of who has the authority on an exigency
5 rate case I think is definitely open for discussion.
6 I know where I am on it.

7 CHAIRMAN GOLDWAY: Looks like -- yes, I was
8 focusing on just the particular.

9 COMMISSIONER LANGLEY: You know, one of the
10 things that I think is good about this discussion is,
11 because we have open public participation, you know,
12 it's good because we might be moved in different ways.

13 MR. RICHARDSON: If I may say, if the
14 Commission acts, after finding the rates are
15 noncompliant, it would not be necessarily an exigent
16 rate -- it would not be an exigent rate increase, it
17 would be to bring the rates into compliance, and with
18 the appropriate remedy under 3662. Another way of
19 looking at this is, 3662 itself allows a party to
20 bring a complaint and allows a public representative,
21 for instance, to bring a complaint.

22 And for instance I theoretically could have
23 brought a complaint and complained that the Postal
24 Service rates now are out of compliance because they
25 don't recover total costs and the Postal Service is

1 financially unstable, and if there was a complaint
2 proceeding that was completed and the Commission at
3 that point found that in fact that's the case, the
4 Commission would then be able to under that authority
5 adjust the rates to the appropriate level and with the
6 remedy which they see fit. And there are no
7 procedural guidelines in that section, which I think
8 is a little unusual, but there are no APA requirements
9 in that section.

10 And so it wouldn't necessarily even have to
11 be a minirate case, the Commission could on the basis
12 simply of, say the public representative's numbers in
13 the filing that the public representative made in this
14 case, could order a rate increase of 3.1 percent. I'm
15 saying that's theoretically, that's to me the reading
16 of the law, that's your authority. Of course that's
17 something you have to decide whether it's appropriate,
18 but I believe that's the way the reading of the law is
19 and makes sense. It's a two-sided coin, one side is
20 the cost of living adjustment but with a relief valve.

21 CHAIRMAN GOLDWAY: I have another question
22 which is to Mr. Olson, who's -- no. Who is it who
23 raised the \$1.7 billion? Was that McLaughlin or
24 Olson? That there are a bunch of products under
25 water, that's \$1.7? That was Bill, okay, that's what

1 I thought, okay. All right, so this is a matter that
2 you've brought to the Commission's attention over many
3 years, the issue of some classes of mail getting
4 subsidies unfairly with regard to all the rate payers
5 who then have to carry the burden of that.

6 And we appear to be in a situation where
7 more and more classes are not covering their costs.
8 Remedying that situation would perhaps violate the
9 rate cap, perhaps cause rate shock, perhaps disrupt
10 the market. What do you see the Commission's role in
11 dealing with this issue that you've brought to us in
12 terms of the \$1.7 billion loss?

13 MR. OLSON: Well, I'd like to think the
14 problem was there even if we didn't bring it to you,
15 and I think that the Commission would have dealt with
16 this at an appropriate time, and this might be the
17 appropriate time. I do believe that there is a
18 requirement to find noncompliance. At that point, it
19 does trigger, as the public representative was saying,
20 the powers and the complaints section, and I don't
21 think those powers would require, for example, the
22 Commission to increase rates immediately.

23 They would require you to order the Postal
24 Service to take some action to address this perhaps in
25 their next rate increase. We're not -- for example

1 even Valpak, who has been raising this issue before,
2 is not advocating an immediate change in rates for
3 periodicals. As a matter of fact, we've seen an
4 instance in recent years, and I can't remember the
5 number of the docket, probably Dr. Haldi or someone
6 will remember, but where the Board of Governors of the
7 Postal Service came back and made a finding under the
8 prior law of revenue insufficiency and exercised the
9 anarchy clause and went ahead and raised rates on July
10 1st of the year.

11 And for the Association of Priority Mail
12 Users I remember the priority mail users were up in
13 arms because they said, this is an unreliable vendor,
14 we cannot trust these people, because even when the
15 Commission comes out with rates the Postal Service
16 changes them. And we had two rate increases in that
17 same year, you may remember, I believe it was January
18 and then July.

19 And this is sort of the reverse of that,
20 where the Postal Service has announced that there
21 would be no rate increases in 2010, which I take to
22 mean that they'll go up on January 3rd, or whatever
23 the first Sunday is in January. But even our position
24 is not to urge that the Commission has to order an
25 increase immediately, but they have to do something.

1 It's getting worse, and if the trend continues we're
2 going to be instead of \$1.75 billion loss from eleven
3 products, we could be at \$2.5 billion loss.

4 And at some point a handful of products are
5 jeopardizing the company, and the business has to have
6 the flexibility to be able to deal with this. So I'm
7 not sure, again this is above my pay grade too, I
8 don't know what the answer is. I think there is no
9 absolute requirement in 3622 that the Commission acts
10 immediately, but there is a requirement that it is
11 addressed, recognized, and that some action is taken.

12 CHAIRMAN GOLDWAY: Great, thank you, that
13 answers my question. Are there other questions from
14 the bench?

15 (No response.)

16 CHAIRMAN GOLDWAY: I have one more that goes
17 to Mr. Haldi's comments, and that is, the Postal
18 Service is to provide service at a adequate sufficient
19 level, that's one of the things it's supposed to
20 report in the annual compliance report. Now, most of
21 you in the room are only concerned with whether the
22 Postal Service delivers your mail from your mail house
23 to the business or consumer to whom it's addressed.

24 A few of you are also interested in the
25 reverse, the customer mailing back in one way or

1 another. And some of you may be interested in the
2 functions of post offices, stations, and branches, and
3 how individuals use those to ship packages or collect
4 packages. So I'm wondering if you have any comments
5 for us. There has been a sort of general acceptance
6 that the Postal Service is doing what it can with
7 regard to rates and finances.

8 Now, there's no great uproar from any of you
9 here about their incompetence, and I'm wondering if I
10 have the same sense in terms of service. Do all of
11 you feel that in spite of the cuts and the reductions
12 that service is adequate, that the Postal Service is
13 relatively competent in the job that it's obliged to
14 do with regard to the service portion of its universal
15 service obligations? Is there anyone who'd like to
16 comment on that?

17 (No response.)

18 CHAIRMAN GOLDWAY: Okay. We only have about
19 fifteen minutes left -- actually we're going a little
20 over -- but we did say that we would give anyone who's
21 interested an opportunity to say something, and if
22 there is anybody here in the room who hasn't had that
23 opportunity to make a public comment, we'd be happy to
24 hear from you. And if there is anyone -- ah, good.
25 Please introduce yourself.

1 MR. MOLER: My name is Ken Moler, I'm a
2 technical assistant to the public representative. And
3 one of the commenters for I guess it's the Direct
4 Marketing Association indicated that the Postal
5 Service should continue to close stations and branches
6 because the mailers cannot afford to support the
7 current network. There may be a lot of people, I
8 might say that differently if I were in front of
9 Congress. In light of the reaction to the proposed
10 closures as it's been, I would say there are a lot of
11 people that are definitely giving Congress some
12 information the other way, they want their post
13 offices.

14 CHAIRMAN GOLDWAY: Thanks for that comment.
15 Anyone in the audience who'd like to ask a question of
16 somebody else in the audience?

17 (No response.)

18 CHAIRMAN GOLDWAY: Final comments from the
19 Commissioners? Any summing up that any of you would
20 like to do?

21 COMMISSIONER LANGLEY: I have one, I just
22 have one comment. I really do appreciate the effort
23 and work that the public rep has put into his filing,
24 it is very thought provoking, as I think everyone
25 would agree. And it is the purpose of the public

1 representative to express independent views, and for
2 that I very much appreciate everything that Mr.
3 Richardson and his colleagues have said. And I want
4 to make sure that we continue to have the benefit of a
5 public representative. The law requires this
6 procedure, or to have a public representative in these
7 open procedures, and I think we all benefit from it.
8 Thank you.

9 CHAIRMAN GOLDWAY: Thank you. Any other
10 comments? Commissioner Blair?

11 COMMISSIONER BLAIR: Just one short comment.
12 There has been a lot of talk today about raising rates
13 to cover the difference between the Postal Service's
14 revenues and in order to bring them back to life. And
15 I am concerned -- concerned isn't the right word. The
16 flip side of that coin is also cutting costs, and I
17 would hope that those of you in the audience today who
18 will be providing additional written comments will
19 give your views to the Commission on the Postal
20 Service's efforts to cut costs to date and their
21 future plans on cutting costs.

22 Because that's to me the flip side of this
23 coin, is that you can raise rates but I'm not sure the
24 community can afford increased rates at this time, and
25 what additional efforts can be done to cut costs and

1 if it's feasible? Because at some point cost cutting
2 will inevitably impact service. But I think those are
3 other viable options that I think the Commission would
4 benefit from hearing your viewpoints on, so thank you.

5 CHAIRMAN GOLDWAY: Vice Chairman Hammond,
6 any comments?

7 VICE CHAIRMAN HAMMOND: No. But this has
8 been very productive, I actually didn't know whether
9 today was going to be productive or not when I walked
10 in, and it's been very productive. So thank you all
11 for your well thought out comments, it's been an
12 education.

13 CHAIRMAN GOLDWAY: Thank you. And
14 Commissioner Acton? No? No comments. Well you've
15 all been very patient. I really did appreciate this
16 conversation that we've had, and believe that all of
17 us in our respective roles with regard to the
18 assurance that there's a healthy Postal Service will
19 do a better job as a result of the information that
20 we've shared today, and I think that your call for the
21 Commission to work with you in the legislative arena
22 that was unanimous among all of you is something we
23 will take to heart and consider.

24 Postal Regulatory Commission rarely takes an
25 advocacy position with regard to legislation. It may

1 be that that's something that we need to consider as a
2 result of your comments with regard to the financial
3 situation with the Postal Service. And we will take
4 into account all of the other comments that you've
5 made, and I hope that our discussion encourages you to
6 provide additional written comments that will flesh
7 out the record and provide us the insights that we
8 need to file our annual compliance determination.
9 Thank you for your participation here today. And the
10 transcripts and records from the proceedings will be
11 available for those who are interested. The meeting
12 is adjourned.

13 (Whereupon, at 11:53 a.m., the hearing in
14 the above-entitled matter was adjourned and
15 concluded.)

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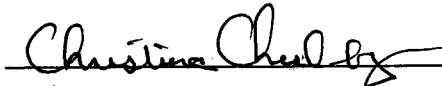
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I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes or digital recording reported by me at the hearing in the above case before

Date: 2/17/10


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